

United States ⁶
Circuit Court of Appeals
For the Ninth Circuit.

CYRUS F. SHELDON,

Appellant,

vs.

GUS MESSERSCHMIDT, CHARLES QUACK-
ENBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,

Appellees.

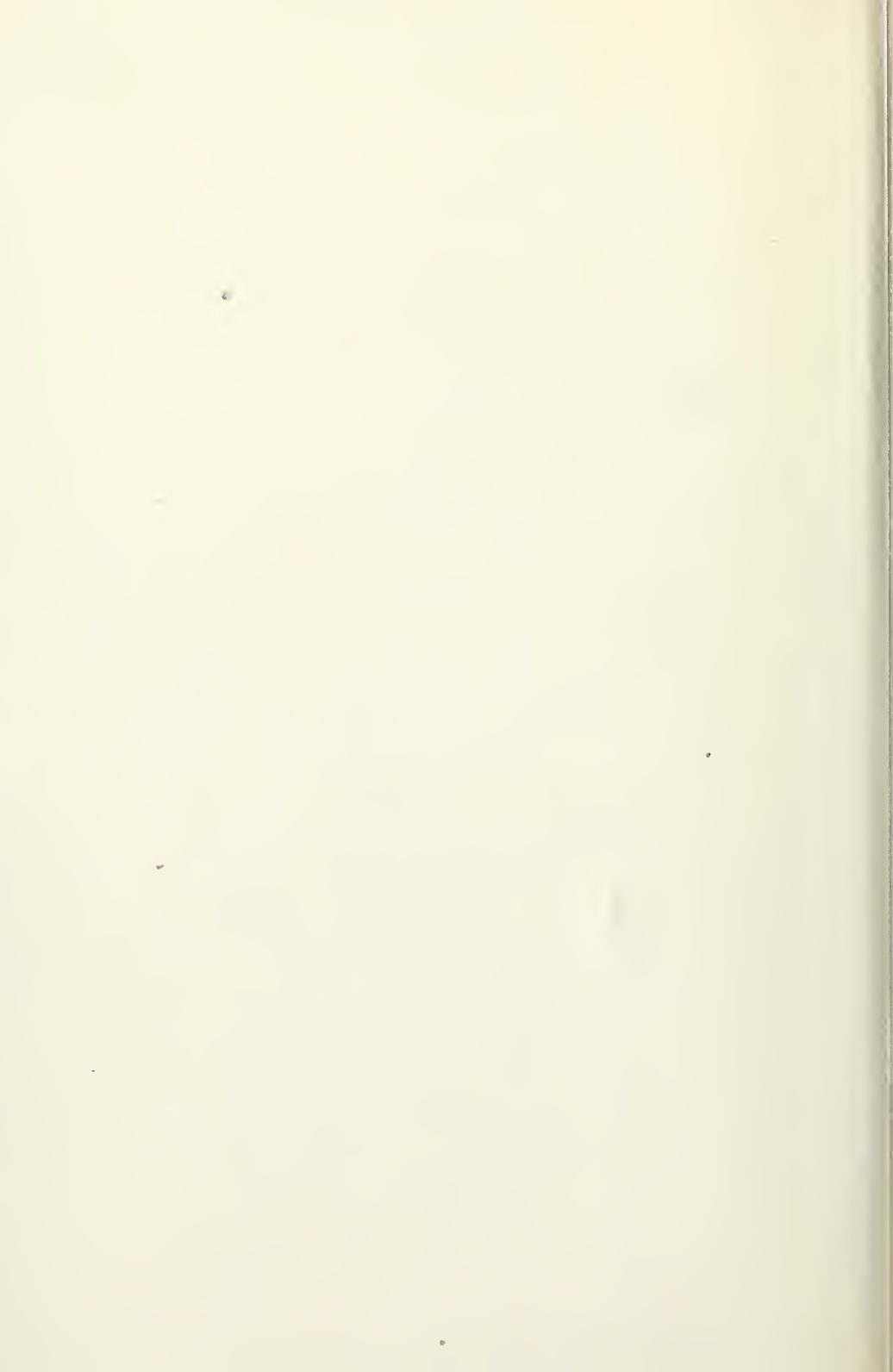
Transcript of Record.

Upon Appeal from the United States District Court for the
District of Alaska, Division No. 1.

Filed

JUL 3 - 1917

F. D. Monckton,
Clerk.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff and Appellant,

vs.

GUS MESSERSCHMIDT, CHARLES A.
QUACKENBUSH and THE JUNEAU
CONSTRUCTION COMPANY,

Defendants and Appellees.

Names and Addresses of Attorneys of Record.

CHENEY & ZIEGLER, Juneau, Alaska,

Attorneys for Appellant.

HELLENTHAL & HELLENTHAL, Juneau,
Alaska,

Attorneys for Appellees.

*In the District Court for the District of Alaska, at
Juneau, Division No. 1.*

No. 1073-A.

CYRUS F. SHELDEN,

Plaintiff,

vs.

GUS. MESSERSCHMIDT, CHARLES A.
QUACKENBUSH and THE JUNEAU
CONSTRUCTION COMPANY,

Defendants.

Bill of Complaint.

To the Judge of the District Court, for the District of Alaska, in Division No. 1:

The plaintiff complains of the above-named defendants and shows to the Court:

1.

That the plaintiff is, and for more than seventeen years last past has continuously been, the owner by right of prior continuous possession and actual occupation, and the owner in fee by virtue of plaintiff's Homestead Claim, known and designated by the surveyor general for said Alaska as "Homestead Claim under Act of March 3, 1903, of C. F. Sheldon, U. S. Survey (amended) No. 375," within the Juneau, Alaska Land District, consisting of 47.34 acres of land, situated about one mile northwest from the City of Juneau, Alaska, on Gastineaux Channel, and extending along and abutting upon the meander line, at mean high tide, of said Gastineaux Channel, and for which said homestead claim, plaintiff now holds "Final Certificate No. 06," dated January 11, 1911, issued to plaintiff by C. B. Walker, Register of the U. S. Land Office at said Juneau, Alaska, and in which said Final Certificate No. 06 the said homestead claim of plaintiff and the area thereof is described, as follows, to wit:

Beginning at Cor. No. 1, whence U. S. L. M. No. 3, bears N. 62° 06' W. O. 98 chains; thence N. 48° 03' E. 6 chains; to corner No. 2; thence N. 23. 16 chains to corner No. 3; thence West 26.45 chains to corner No.

4; thence S. 5.48 chains to corner No. 5, M. C. thence meandering (1) S. $37^{\circ} 52'$ E. 5.11 chains, (2) S. $43^{\circ} 15'$ E. 3.90 chains (3) S. $59^{\circ} 31'$ E. 6.80 chains (4) S. $39^{\circ} 14'$ E. 13.88 chains (5) S. $67^{\circ} 10'$ E. 1.60 chains to corner No. 1, the place of beginning, being situated on *on* the shore of Gastineaux Channel; and that plaintiff is entitled to the possession thereof, and now is in the possession of the same. [1*]

2.

That for a distance of two thousand feet, or thereabouts, said homestead claim of plaintiff and lands and premises, abut upon and is bounded by the waters of said Gastineaux Channel, an arm of the Pacific Ocean, navigable for vessels of all sizes, and in which the tide ebbs and flows.

3.

That the plaintiff many years last past, and during his continuous occupancy and possession, as aforesaid, at much cost and expense to plaintiff, has erected suitable buildings for trading and residence purposes, and made other valuable improvements upon his said homestead claim, land and premises, and all of such said improvements were made, as aforesaid, and placed upon said land and homestead, long before said defendants or either of them, came to said Juneau, Alaska.

4.

That on about December 29, 1913, or thereabout, while plaintiff was so possessed of said homestead, land and premises, the defendants without right or

*Page-number appearing at foot of page of original certified Transcript of Record.

title so to do, entered upon the tide-lands lying immediately in front and abutting upon said homestead lands and premises of plaintiff, and took possession of one hundred and six (106) feet thereof in width, commencing at a point, the same being corner No. 1, of Homestead Survey No. 375 as amended, and running along the boundary line of said homestead along mean high tide, a distance of 106 feet, being 106 feet along the meander line of said Gastineaux Channel, and extending throughout said width of 106 feet south or down to the deep water of said Gastineaux Channel, and the defendant set posts or piles and caused posts and piles to be set and driven upon said tide-land, and as plaintiff is informed and so believes, and therefore so alleges, the said defendants intend to erect or cause to be erected on said posts and piles buildings and other structures, and threaten and will drive and are now placing and setting more posts or piles upon said tide-land, and will [2] improve the said tide-land "and thereby deprive the plaintiff of his right of ingress to and egress from *from* his said upland to and over said tide-land and to and from said navigable waters, unless restrained by an order of this Court."

J. T. R.
D. C.
4/26/15

5.

That the defendants, at the same time above mentioned, while plaintiff was so possessed, as aforesaid, of said homestead claim, land and premises, without right, or title to so do, entered upon the said above described tide-land and premises and took possession of a further piece or part thereof, to wit, of the width of seventy feet, commencing at a point on the me-

ander or boundary line of said homestead claim, about 430 feet northwest from said corner No. 1, of said Amended Homestead Survey No. 375, and running thence along said boundary line N. W. on the meander line of said Gastineaux Channel, a distance of seventy feet, and extending throughout said width of 70 feet south or down to deep water of said Gastineaux Channel, and the defendants set posts or piles and caused posts or piles to be set or driven upon said tide-land, and as plaintiff is informed and so believes, and therefore so alleges, the said defendants intend to erect or cause to be erected on said posts and piles buildings and other structures, and threaten and will set and drive and now are placing and setting more posts (and capping the same) upon said tide-land, and improve the said tide-land, unless restrained by an order of this Court.

6.

That by reason of the premises aforesaid and by reason of the plaintiff's ownership in, and occupancy of, said lands abutting upon said navigable waters of said Gastineaux Channel, complainant is entitled to the use and occupancy of said tide-lands, together with all riparian and littoral rights given and granted to owners of lands bounded by navigable waters; and the defendants by reason of their acts in taking possession of said tide-lands, have deprived the plaintiff of the free use and occupancy of, and of plaintiff's riparian and littoral rights in and to the said tide-lands to plaintiff's great and irreparable injury and damage, and threaten to further injure and damage plaintiff by erecting buildings and other improve-

ments upon said tide-lands, and occupying the same and appropriating to their own use and benefit said tide-lands. [3]

7.

Plaintiff has no plain, speedy, adequate and complete remedy at law, and the defendants well knew of plaintiff's rights in the premises before said improvements, posts and piles were placed upon said tide-lands, having had notice of the same.

Wherefore, plaintiff prays that this Court may make and enter its order and decree, adjudging and decreeing this plaintiff to be entitled to the free use and occupancy of said tide-lands, and entitled to exercise all riparian and littoral rights over the same.

That this Court may make and enter its further order and decree, restraining and enjoining the defendants, and each of them, from permitting the posts or piles, together with all improvements placed thereon by them, or at their instance, to remain on said tide-lands, and forever restraining the defendants, and each of them, from setting or placing posts or piles, erecting or constructing any buildings or improvements upon any of said tide-lands, or in any manner interfering with plaintiff's right in the free use and occupancy of said tide-lands.

And plaintiff prays for such other and further relief as to the Court may seem equitable and just in the premises, and that the defendants pay the costs and disbursements of this suit or action.

JOHN G. HEID,
Attorney for Plaintiff.

United States of America,
District of Alaska,—ss.

C. F. Sheldon, being first duly sworn says: I am the plaintiff in the foregoing entitled suit, that I have read the foregoing complaint and know the contents thereof, that the same is true, as I verily believe.

C. F. SHELDON.

Subscribed and sworn to before me this 2d day of January, 1914.

[Notarial Seal]

GUY McNAUGHTON,
Notary Public for Alaska.

Filed in the District Court, District of Alaska, First Division, Jan. 2, 1914. J. W. Bell, Clerk. By H. Malone, Deputy. [4]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

Case No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS. MESSERSCHMIDT, CHARLES A.
QUACKENBUSH and the JUNEAU CON-
STRUCTION COMPANY.

Defendant.

Answer.

Comes now the defendants for answer to the complaint herein, admit, deny and allege:

1.

The defendants deny each and every allegation in said complaint contained.

Further answering by way of new matter, the defendants allege:

1.

That the ground which they are in possession of is on the tide-flats of Gastineau Channel below the line of mean high-tide; that the premises occupied by these defendants and the structures placed and maintained thereon do not interfere with plaintiff's right of ingress and egress to and from deep water of Gastineau Channel; that the plaintiff has never used his right of ingress and egress to and from deep water and that the defendants are informed and believe, and therefore allege that this plaintiff does not intend to use said right of ingress and egress.

WHEREFORE these defendants pray that the cause be dismissed and that they be allowed their costs and disbursements.

HELLENTHAL & HELLENTHAL,

Attorneys for Defendant. [5]

United States of America,
Territory of Alaska,—ss.

Gus. Messerschmidt, being first duly sworn, on oath deposes and says: That he is one of the defendants in the above-entitled action; that he has read the foregoing Answer, knows the contents thereof and believes the same to be true.

GUS. MESSERSCHMIDT.

Subscribed and sworn to before me this 3d day of June, A. D. 1915.

[Notarial Seal] SIMON HELLENTHAL,
Notary Public for Alaska.

My commission expires Nov. 30, 1917.

Due service by copy of the foregoing admitted this
_____ day of June, 1915.

_____,
Attorney for Plaintiff.

Filed in the District Court, District of Alaska, First Division, Jul. 7, 1915. J. W. Bell, Clerk. By John T. Reed, Deputy. [6]

*In the District Court for the Territory of Alaska,
Division No. 1.*

No. 1073-A.

CYRUS F. SHELDON,
Plaintiff,

vs.

GUS. MESSERSCHMIDT, CHARLES QUACK-
ENBUSH and the JUNEAU CONSTRUC-
TION COMPANY,
Defendants.

Demurrer.

Comes now the plaintiff by his attorney and demurs to the answer of the defendants herein for the reason that the said answer does not state facts sufficient to constitute a defense to the complaint of plaintiff herein.

JOHN G. HEID,
Attorney for Plaintiff.

Due service of a copy of the within demurrer is hereby admitted at Juneau, Alaska, this 3d day of August, 1915.

HELLENTHAL & HELLENTHAL,
Attorneys for Defendants.

Filed in the District Court, District of Alaska,
First Division, Aug. 7, 1915. J. W. Bell, Clerk.
By —————, Deputy. [7]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1073-A.

CYRUS F. SHELDON

vs.

GUS. MESSERSCHMIDT et al.

Order Overruling Demurrer to Answer.

The demurrer of plaintiff to the answer of the defendants herein is submitted to the Court without argument, and forthwith overruled.

Dated Thursday, August 12, 1915.

ROBERT W. JENNINGS.

District Judge. [8]

*In the District Court for the Territory of Alaska,
Division No. 1, at Juneau.*

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS. MESSERSCHMIDT, CHARLES A.
QUACKENBUSH and the JUNEAU CON-
STRUCTION COMPANY,

Defendants.

Reply.

The plaintiff replies to the answer of defendants and alleges:

I.

Replying to I of defendants' further answer, this plaintiff denies that said ground, referred to by defendants, is all on the tide-flats of Gastineau Channel below the line of mean high tide and that defendants are in possession of the same without interference with plaintiff's right of, ingress and egress to and from deep water of said Gastineau Channel; and as to the remainder of the allegations contained in said paragraph, as well as all of them, plaintiff says that said further answer does not state facts sufficient to constitute a defense to said complaint.

WHEREFORE, plaintiff asks judgment against defendants as prayed for in his complaint filed herein, and for costs.

JOHN G. HEID,
Attorney for Plaintiff.

United States of America,
District of Alaska,—ss.

C. F. Sheldon, being first duly sworn says: I am the plaintiff in the above-entitled action, that I have read the foregoing reply and know the contents thereof, that the same is true, as I verily believe.

C. F. SHELDON.

Subscribed and sworn to before me this —— day of December, 1915.

[Notarial Seal]

JOHN G. HEID,

Notary Public for Alaska.

My commission expires Jan. 9th, 1918.

Filed in the District Court of Alaska, First Division. Jan. 13, 1916. J. W. Bell, Clerk. By _____, Deputy.

[Endorsed]: No. 1073-A. In the District Court for Alaska, Div. No. 1. C. F. Sheldon vs. Gus. Messerschmidt et al. Reply. J. G. Heid, Atty. for Plff.

Due and legal service of a copy of the within reply is hereby admitted at Juneau, Alaska, January 14th 1916.

HELLENTHAL & HELLENTHAL,

Attorneys for Defendants. [9]

*In the District Court for the Territory of Alaska,
Division No. 1, at Juneau.*

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUSTAVE MESSERSCHMIDT, CHARLES A.
QUACKENBUSH and THE JUNEAU
CONSTRUCTION COMPANY,

Defendants.

Judgment.

This cause coming on for trial the 8th day of November, 1916, and the plaintiff having introduced all of his evidence, and having rested, and the attorney for the defendants thereupon having made a motion for nonsuit on account of failure to show any equity for an injunction. And the Court having considered said matter finds no evidence that defendants have interfered or are about to interfere with plaintiff's ingress or egress from or to the upland to or from the navigable water, nor that plaintiff has used, or is about to use his said right of ingress or egress:

WHEREFORE, it is ORDERED, ADJUDGED AND DECREED that the above-entitled cause be dismissed and that the defendants be allowed their costs to be taxed by the clerk.

Dated at Juneau, this 7th day of February, 1917.

The plaintiff is hereby given ninety (90) days from the date of the foregoing judgment, in which to prepare, serve and file his bill of exception in the above-entitled cause.

ROBERT W. JENNINGS,
District Judge.

Entered Court Journal, No. M, page 387.

Filed in the District Court, District of Alaska,
First Division. Feb. 7, 1917. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [10]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS MESSERSCHMIDT, CHARLES QUACK-
ENBUSH and THE JUNEAU CONSTRUC-
TION COMPANY,

Defendants.

Bill of Exceptions.

Be it remembered that this cause came on to be tried before Honorable ROBERT W. JENNINGS, the Judge of this court, on the 8th day of November, 1916, at Juneau. Plaintiff appeared in person and by his counsel, John G. Heid, Esq. Defendants appeared in person and by their attorneys, Messrs. Hellenthal & Hellenthal. Opening statements having been made by counsel for each side, the following proceedings were had: [11]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS MESSERSCHMIDT, CHARLES QUACK-
ENBUSH and THE JUNEAU CONSTRUC-
TION COMPANY,

Defendants.

Transcript of Testimony. [12]

Testimony of Cyrus F. Sheldon, in His Own Behalf.

CYRUS F. SHELDON, the plaintiff herein, upon being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HEID.)

Q. What is your name, and where do you reside?

A. My name is Cyrus F. Sheldon; I live on my homestead outside of town.

Q. Are you the plaintiff in this case? A. I am.

Q. I will ask you to look at this paper and see if you can identify it.

A. I do; this is a copy of my location notice.

Q. Of what? A. Homestead claim.

Q. The one in issue herein? A. Yes.

Mr. HEID.—I offer this in evidence, if your Honor please.

(Testimony of Cyrus F. Sheldon.)

Mr. HELLENTHAL.—I object to it as immaterial.

The COURT.—Objection overruled.

(Whereupon said location notice was received in evidence and marked Plaintiff's Exhibit "A.")

Mr. HEID.—I now desire to offer in evidence a further notice on this tract of land.

Mr. HELLENTHAL.—I object to this as immaterial—it shows it has been abandoned.

The COURT.—Objection overruled.

(Whereupon said notice was received in evidence and marked Plaintiff's Exhibit "B.")

Q. I ask you what this document is. (Handing paper to witness.)

A. It is a quitclaim deed. [13]

Q. Dated the 6th day of January, 1905?

A. Yes.

Mr. HEID.—I offer that in evidence.

Mr. HELLENTHAL.—I object for the same reason.

The COURT.—This is an equity case and if it is immaterial it cannot hurt you, and if it is material it might be important.

Objection overruled.

(Whereupon said deed was received in evidence and marked Plaintiff's Exhibit "C.")

Mr. HEID.—I next offer in evidence the official plat, posted on the ground, issued by the surveyor-general for Alaska, for the Sheldon homestead claim, survey number 375.

The WITNESS.—That is the official plat that was

(Testimony of Cyrus F. Sheldon.)

posted after the period of publication.

Mr. HELLENTHAL.—I have no objection to it—it makes no difference whether it was posted or not.

(Whereupon said plat was received in evidence and marked Plaintiff's Exhibit "D.")

Mr. HEID.—I also want to introduce the notice of application for homestead entry posted at the same time as the official plat was posted.

Mr. HELLENTHAL.—That is all incorporated in the final receipt, and that is the judgment of a tribunal that considers all those propositions before the final receipt is issued—this is all superfluous and encumbers the record, and is immaterial.

The COURT.—Objection overruled.

(Whereupon said application for homestead entry was received in evidence and marked Plaintiff's Exhibit "E.")

Mr. HEID.—I now desire to offer the certificate of final entry issued by the registrar of the general land office at Juneau, Alaska, to the plaintiff, Cyrus F. Sheldon, for homestead number 375. [14]

Mr. HELLENTHAL.—I object to it for the same reason I stated before.

The COURT.—Objection overruled.

(Whereupon said certificate of final entry was received in evidence and marked Plaintiff's Exhibit "F.")

Mr. HEID.—That is all for the present.

(Witness excused.) [15]

Testimony of H. P. Crowther, for Plaintiff.

H. P. CROWTHER, introduced as a witness on behalf of the plaintiff, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HEID.)

Q. What is your name? A. H. P. Crowther.

Q. What is your occupation?

A. United States deputy surveyor.

Q. How long have you resided in and about Juneau? A. Since 1905.

Q. Are you acquainted with United States survey number 375, the survey known as the Sheldon homestead survey? A. I am.

Q. Are you familiar with the boundaries along the meander line of Gastineau Channel?

A. Yes, sir.

Q. Do you know where the defendant Messerschmidt and his associates have erected some structures in the way of piling and buildings in front of this homestead entry?

A. I know what Mr. Sheldon told me was Mr. Messerschmidt's improvement on that waterfront about twelve months ago, but I haven't been out there since.

Q. The time you were out there did you make any survey of any lines?

A. I set out the line of ordinary high water.

Q. What did you find in reference to those structures placed there by the defendants as being in con-

(Testimony of H. P. Crowther.)

flict with any of those lines—lines of ordinary high-water?

Mr. HELLENTHAL.—Your Honor, I object to that for the reason that the buildings are situated on tide-lands, and tide-lands, as ordinarily understood, are below the ordinary line of [16] high water; if they are above the line of ordinary high water it could not be tried out in this case.

The COURT.—The objection is overruled.

A. The improvements which were pointed out to me by Mr. Sheldon as having been placed there by Mr. Messerschmidt and others were partly on the upland of the Sheldon homestead and partly on the tide-lands abutting the homestead—in other words, a portion of the structure was above the line of ordinary high water and a portion of it was below.

Q. The obstruction you found placed there on the tide-land abutting the upland of the Sheldon survey number 375 is an obstruction, isn't it, between the upland and the tide-lands, or deep water?

A. It is right along the tide-line.

Mr. HELLENTHAL.—That is a conclusion—let him state what there is there.

The COURT.—I imagine he is going on to tell what the obstruction consists of—objection overruled.

A. The structures placed there in the manner I have already stated are partly on the tide-land and partly on the upland, and they cover a portion of the meander line of the frontage of that survey; and they consist of piling, capping and platforms.

(Testimony of H. P. Crowther.)

Q. Do you know for what length and extent the structures continue—what they cover?

A. I cannot tell you the length with regard to the defendant Messerschmidt, but the total length of the obstructions placed by everybody there that I saw would amount to something like 500 feet, beginning at the southwest corner of the Sheldon homestead and extending northwest along its front.

Q. Now, the nature and character of the obstruction you referred to, would they prevent ready ingress and egress from the upland to the navigable water? [17]

Mr. HELLENTHAL.—I object to that as a conclusion.

The COURT.—It is a pretty general question, Mr. Heid.

The WITNESS.—Well, it tends to form an obstruction to ingress and egress. I had to duck my head to get underneath it—a shorter man might not have any trouble.

Q. He would be crawling around between the piling underneath; is that it? A. Yes.

Q. The piling as it stands there, wouldn't that be an absolute obstruction there and cut off ingress and egress from and to the navigable water?

A. It certainly would have that tendency.

Mr. HEID.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Crowther, you don't know exactly how much of that ground is covered there by the defendant Messerschmidt?

(Testimony of H. P. Crowther.)

A. At this time, no, sir; I haven't examined it for, I think, twelve months.

Q. And you measured it altogether, the different houses placed there and the piling, and it was about 500 feet long? A. That is my impression of it.

Q. You don't know how much belongs to one party and how much belongs to another party, do you?

A. No, sir, I don't.

Q. Mr. Crowther, do the meander line at that place and the line of mean high tide coincide?

A. I am of the opinion they are not exactly the same.

Q. They are two different things, aren't they?

A. That is my impression.

Q. And they are not the same thing?

A. No, but the difference is very slight. [18]

Q. The meander line does not follow the sinuosities of the stream?

A. You are referring to the meander line as shown upon the official plat?

Q. The meander line in all cases.

A. I do not agree with you on that.

Q. The meander line on the official plat, then?

A. The meander line on the official plat approximated the existing line of ordinary high water at the time the survey was made, but owing to gravel having been removed from that waterfront the line has been changed considerably.

Q. The line has been changed by the removal of gravel? A. Yes.

(Testimony of H. P. Crowther.)

Q. It has made the line of mean high tide further in?

A. In places along there it has, yes, as compared with the conditions which existed at the time of the official survey.

Q. And that is right near to where these houses have been built where that gravel was taken out?

A. Some of it was taken out right close by there.

Mr. HELLENTHAL.—That is all.

(Questions by the COURT.)

Q. Mr. Crowther, I understand you to say that these obstructions consist of piling and capping and platforms?

A. It was in that shape when I visited it about twelve months ago.

Q. Does the platform extend all over the piling?

A. Yes, sir.

Q. The whole thing is a platform?

A. Yes, that is my recollection of it.

Q. When you say it prevents ingress and egress, do you mean ingress and egress in preventing boats getting up to the upland?

A. It certainly would have that tendency; you would have to [19] thread your way amongst the piling.

Q. Would it prevent ingress and egress for any other purpose?

A. Yes; if anyone were going to remove gravel with teams he couldn't take it through the piling; you can crawl around underneath and can get through the piling by ducking under the capping, but

(Testimony of H. P. Crowther.)

it certainly tends to obstruct it—that is what I should have said.

The COURT.—That is all.

Redirect Examination.

(By Mr. HEID.)

Q. Now, in case the tide was high and came up to those obstructions would it cut off the ingress and egress to and from the upland to the navigable water—that is, deep water?

Mr. HELLENTHAL.—I object to that—he has already testified to it.

The COURT.—Yes; objection sustained.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Are there cabins on this platform, or is the platform covered?

A. At the time of my visit part of it was covered and part of it was uncovered.

Q. If a person wanted to build a wharf there and make a place for large ships, that platform would facilitate ingress and egress under those conditions, would it not? A. Yes, I think it might be said to.

Q. Under certain conditions?

A. Under certain conditions. If the wharf were built at the same elevation as that platform—that is, the floor of the wharf, and there was an approach built at the same elevation, it might.

Mr. HEID.—I move to strike that last question and answer.

The COURT.—It is so self-apparent that it is not necessary for [20] the witness to testify to it.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [21]

**Testimony of Cyrus F. Sheldon, in His Own Behalf
(Recalled).**

CYRUS F. SHELDON, the plaintiff herein, upon being recalled as a witness in his own behalf, having been previously duly sworn, testified as follows:

Direct Examination.

(By Mr. HEID.)

Q. Mr. Sheldon, do you know the obstructions placed in front of your homestead, survey number 375, by the defendants? A. I do.

Q. Describe them to the Court, and also where they are situated.

A. Well, there is one a hundred and some feet right up next to this corner—that would be the southwest corner, I believe—and then there is another one about 350 or 400 feet further down there where that cabin used to stand.

Q. What is the dimension of the first?

A. Well, I should think the first one is about—

The COURT.—Just a moment—who owns the first one?

The WITNESS.—The people who built it didn't give me much satisfaction but I later found out it belongs to Messerschmidt and he doesn't deny it; it is 106 or 107 feet front, I should think.

Q. And how wide, about?

A. Oh, I should think probably 30 or 35 feet.

(Testimony of Cyrus F. Sheldon.)

Q. What is the nature of that structure—describe it?

A. Well, it is posts and caps, and then floor joists on the caps and floored over—platforms.

Q. Any cabins on it?

A. No, there is no cabins on it.

Q. I will ask you whether or not that constitutes and is an obstruction?

Mr. HELLENTHAL.—I object to that.

The COURT.—He may answer the question, because the Court knows what general language is and what specific language is, and will take all this into consideration when it renders its opinion. [22]

A. It surely is.

Q. In what manner would it be an obstruction to you in the enjoyment of your upland in case you desired to reach deep water at low tide?

A. I think it would absolutely cut me off because if they had a right to the possession of it they would undoubtedly keep me off as a trespasser.

Q. Now, you say the first obstruction consists of 106 or 107 feet? A. Yes.

Q. What is the other obstruction that you spoke of?

Mr. HELLENTHAL.—I object to that because it shows that the obstruction is in regard to some other defendant in some other case.

The WITNESS.—It is the same case I am going to swear about.

The COURT.—Obstructions maintained by Messerschmidt?

(Testimony of Cyrus F. Sheldon.)

The WITNESS.—Yes. I should think about 400 feet from the corner there—something like 'that, anyway.

Q. What is the nature of that obstruction?

A. There is another foundation about 70 feet frontage on the land there, partly above the mean high tide and partly below it, and that consists of posts and caps and floor joists, and they made a little floor there, but it isn't entirely floored over.

Q. Does that constitute an obstruction?

A. It does.

Mr. HELLENTHAL.—I object to that.

Q. Preventing you from the enjoyment of your land if you desire to reach deep water at low tide?

A. It does.

Mr. HEID.—That is all. [23]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Sheldon, this plat introduced here represents that land (referring to Plaintiff's Exhibit "D")—the place marked "Sheldon's House," is that the place where you reside? A. It is.

Q. Have you any other buildings on the upland?

A. No.

Q. That is the only building you have on the upland? A. Yes.

Q. And the rest of the upland is unimproved land—most of it is unimproved?

A. No, it isn't; there is a whole lot of it cleared.

Q. What part of it is cleared?

(Testimony of Cyrus F. Sheldon.)

A. All of this is cleared in front of these obstructions.

Q. You mean it has been slashed?

A. Yes, the brush cut off of it.

Q. Would you call that cleared ground when you slash it and cut the timber out of it?

A. Surely must be; the stumps are not dug out,—

Q. The stumps are not dug out and the underbrush is there, isn't it?

A. No, the underbrush is all cleared out.

Q. It has all grown up again, hasn't it?

A. No.

Q. When did you cut that out?

A. A couple of years ago; nothing there but grass.

Q. And the stumps of the underbrush are still there? A. Yes.

Q. And the stumps of the trees are still there?

A. Yes.

Q. And that is all true of the upland—

Mr. HEID.—I desire to object to all that because if the Government [24] has finally passed upon the title it is absolutely immaterial what he has done.

The COURT.—Objection overruled.

Q. And your house is about how many feet away from the place where these platforms have been built?

A. Oh, to the platform nearest to my house it would probably be 700 or 800 feet— probably 700 feet.

Q. And how far is your house from the north

(Testimony of Cyrus F. Sheldon.)

boundary line of your property—that is, from corner number 5?

A. I don't know, but you ought to be able to see it on this line, but he don't seem to give the distance there.

Q. What have you done in the way of wharfing out? Have you done anything in the way of building a wharf from your upland over the tide-lands?

A. No.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. HEID.)

Q. How long have you resided on this homestead of yours?

A. I have resided there since the spring of 1895.

Q. Has it been your home?

A. Yes; I have resided there.

Q. You have no other place of residence but that?

A. No, I have had no other place of residence except that outside of when I was out doing assessment work.

Q. And you are still residing there. A. Yes.

Q. Been in continuous occupation and possession of that ground? A. Yes.

Mr. HEID.—That is all.

(Witness excused.) [25]

Testimony of George F. Miller, for Plaintiff.

GEORGE F. MILLER, introduced as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of George F. Miller.)

Direct Examination.

(By Mr. HEID.)

Q. Your name and place of residence?

A. George F. Miller; Juneau.

Q. Do you know the plaintiff's homestead entry, known as the Sheldon Homestead Entry, Survey number 375? A. Yes.

Q. Have you been over the ground in recent years? A. Yes, I have.

Q. Do you know of any obstruction being placed there in front of this homestead entry by the defendants? A. Yes.

Q. Are they placed there at the point as described by Mr. Sheldon just a short time ago? A. Yes.

Q. Now, have you carefully looked at those obstructions or those structures placed there abutting the meander line of Gastineau Channel of this homestead entry? A. Yes, I looked at them.

Q. Now, describe to the Court what those structures are.

A. Piles and joists and some of them is floored.

Q. Now, I will ask you the character of those structures you saw there, whether they are an obstruction to the upland owner if he desires to get out to deep water at low tide, that part covered by these obstructions?

A. He wouldn't need them if it didn't get too low tide.

Q. At high tide can you get down there?

A. No, you cannot.

Q. Isn't it a fact that these structures would be an

(Testimony of George F. Miller.)

obstruction [26] to the use and enjoyment of the upland by the upland owner if he wanted to get down to deep water from that strip of ground?

A. Yes, it would be an obstruction.

Q. Now, that holds good with all the obstructions placed there by the defendants, don't it?

A. Yes.

Mr. HEID.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You have been on the ground, haven't you, Mr. Miller? A. Yes.

Q. And you know the condition of the upland in front of which these piling are placed? A. Yes.

Q. What kind of upland is that?

A. Oh, the timber was slashed off.

Q. Just unimproved land, partially cleared?

A. Yes; there are stumps, but the timber is slashed off.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

PLAINTIFF RESTS. [27]

Mr. HELLENTHAL.—The defendant moves for a nonsuit at this time, for the reason that plaintiff has not shown that these structures placed upon the tidelands interfere with plaintiff's right of ingress and egress; for the reason that plaintiff's right of ingress and egress, in the first place, is dependent upon a necessity for use, and for the reason that the structures shown to have been placed thereon are such as to facilitate plaintiff's right of ingress and egress.

The COURT.—The motion for a nonsuit is granted. [28]

**Plaintiff's Exhibit "A"—Location Notice of
Homestead Claim.**

Know all men by these presents, that I, Cyrus F. Sheldon, of Juneau, Alaska, hereby record that certain piece or parcel of land, heretofore occupied by me, for more than seven years last past, as a homestead claim, and still now claim the same as and for a homestead claim, situated in Harris Mining District, Alaska, and more particularly described, as follows, to wit:

Beginning at a point, about 200 feet southeast of and from U. S. Initial Monument, situated at mean high tide mark of Gastineaux Channel, at or near the west corner of the incorporated limits of said Juneau, Alaska, running thence due north 120 rods, thence west 160 rods, thence due south to mean high tide mark of said Gastineaux Channel, thence southeast, along the meandering line of said Gastineaux Channel, 160 rods, to the place of beginning.

This claim is made under the act of Congress, approved March 3, 1903.

CYRUS F. SHELDEN,
Claimant.

Plffs. Exhibit No. "A." Received in Evidence Nov. 8, 1916. In cause No. 1073-A. J. W. Bell, Clerk. By John T. Reed, Deputy. [29]

Plaintiff's Exhibit "B"—Notice of Location.
SHELDEN AND MILLER TRADING SITE
LOCATION.

Juneau, Alaska, Feb. 20th, 1895.

Notice is hereby given that we the undersigned citizens of the United States do claim this ground as a Trading Site.

Beginning about 200 feet in a southeast direction from a Government Monument situated on the west side of the mouth of Gold Creek in Harris Mining District, District of Alaska, running 320 rods in a northwest direction up the beach, thence 80 rods in a northeast direction, thence 320 rods in a southeast direction, thence 80 rods in a southwest direction to place of starting. To be known as the Sheldon and Miller Trading Site.

C. F. SHELDON,
GEO. MILLER,
Locators.

United States of America,
District of Alaska,—ss.

I hereby certify that the foregoing is a true, correct and complete transcript of the record, and of the whole thereof, as the same appears of record in Book "G" or 2 of Lots, records of the Juneau Recording District, District of Alaska.

Witness my hand and official seal this 13th day of January, 1905.

[Seal of Recorder]

H. H. FOLSOM,
Recorder Juneau Recording District.

District of Alaska,
Juneau Recording District,—ss.

The within instrument was filed for record at 9 o'clock A. M. Feb. 21, 1895, and duly recorded in book G, on page 155, of the records of said District.

H. W. MELLEN,
District Recorder.

Plffs. Exhibit "B." Received in Evidence Nov. 8, 1916. In Cause No. 1073-A. J. W. Bell, Clerk.
By John T. Reed, Deputy. [30]

Plaintiff's Exhibit "C"—Quitclaim Deed, C. F. Miller et ux. to C. F. Sheldon.

THIS INDENTURE, made this 6th day of January, in the year of our Lord, one thousand nine hundred and five, between George F. Miller & Elizabeth Miller, his wife, of Juneau, Alaska, parties of the first part, and C. F. Sheldon of the same place, the party of the second part, WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of one 00/100 dollars, lawful money of the United States of America, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have remised, released and forever quitclaimed, and by these presents do remise, release and forever quitclaim, unto said party of the second part, and to his heirs and assigns, all the right, title, interest, and estate of said parties of the first part in and to all that certain lot, piece, or parcel of land, situate, lying and

being near Juneau, in the District of Alaska, and particularly described as follows, to wit:

All their right, title and interest in and to the Sheldon & Miller Trading Site, situated adjoining the Evergreen Cemetery and more particularly described in the location notice thereof of record in the office of the U. S. Commissioner of Juneau precinct, Alaska, wherein the same is located in book 2 or G of lot locations, at page 155, to which reference is here made.

TOGETHER with all and singular, the fixtures, improvements, rights, privileges, tenements, hereditaments, and appurtenances, thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said grantors, for themselves, their heirs, executors, administrators and assigns, hereby covenant and agree that the said property is [31] free from all encumbrances and that they have good right to convey the same.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

GEO. F. MILLER. [Seal]

ELIZABETH MILLER. [Seal]

Signed, sealed and delivered in the presence of:

C. C. HEID.

H. A. DAY.

United States of America,
District of Alaska,—ss.

I, H. A. Day, a notary public in and for the District of Alaska, duly commissioned, sworn and qualified, do hereby certify that on this 6th day of January, A. D. 1905, before me personally appeared Geo. F. Miller & Elizabeth Miller, his wife, to me well known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed, and for the uses and purposes therein mentioned.

And Elizabeth Miller, wife of the said Geo. F. Miller, upon an examination by me separate and apart from her said husband, when the contents of said instrument were by me fully made known to her, and she was by me fully apprised of her rights and of the effect of signing said instrument, did, freely and voluntarily, separate and apart from her said husband, acknowledge the same, acknowledging that she did voluntarily, of her own free will and without fear or coercion from her said husband, execute the same as her free and voluntary act and deed and for the uses and purposes therein mentioned.

Given under my hand and official seal this 6th day of January, A. D. 1905.

[Notarial Seal]

H. A. DAY,

Notary Public in and for the District of Alaska.

My commission expires ————— [32]

[Endorsed]: (\$1.60 Pd. 2:15 P. M. Jany. 9, 1904.)
Quitclaim Deed from G. F. Miller et ux. to C. F. Sheldon. From law offices of Heid & Day, Juneau, Alaska.

District of Alaska, Juneau,—ss.

The within instrument was filed for record at 2:15 o'clock P. M. Jany. 9, 1905, and duly recorded in book 20 of deeds, on page 339, of the records of said district.

H. H. FOLSOM,
District Recorder.

Plffs. Exhibit No. "C." Received in Evidence
Nov. 8, 1916. In Cause No. 1073-A. J. W. Bell,
Clerk. By John T. Reed, Deputy. [33]

United States of America,
District of Alaska,
Division No. 1,—ss.

I, the undersigned, clerk of the District Court for the District of Alaska, Division No. One, do hereby certify that the hereto attached is a full, true and correct copy of the original order transmitting plaintiff's Original Exhibit "D" in cause No. 1073-A, Sheldon vs. Messerschmidt et al., of record in my office.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the said Court at Juneau, Alaska, this 31st day of March, 1917.

[Seal]

J. W. BELL,
Clerk.

By _____,
Deputy [33½]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS MESSERSCHMIDT, CHARLES QUACK-
INBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,

Defendants.

**Order Transmitting Plaintiff's Original Exhibit
"D."**

Upon oral motion of plaintiff, it appearing that Plaintiff's Exhibit "D," in the above-entitled cause, is a patent plat, being U. S. Survey No. 375; and,

It further appearing that it is necessary that said exhibit "D" be made a part of the bill of exceptions in this cause on appeal:

NOW, THEREFORE, it is hereby ordered that the clerk of this court be and he is hereby authorized and instructed to attach said original exhibit "D," to a certified copy of this order, and to include said certified copy of this order together with said exhibit "D," attached hereto in the bill of exceptions in this cause in order that said exhibit may be withdrawn from the files of this court and transmitted to the Circuit Court of Appeals.

Done in open court this 26th day of March, A. D.
1917.

ROBERT W. JENNINGS,
Judge.

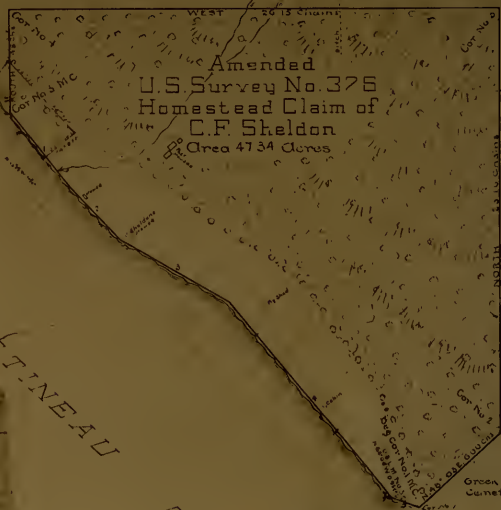
Entered Court Journal No. N, Page 60.

OK.—H. & H.

Filed in the District Court, District of Alaska,
First Division. Mar. 26, 1917. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [34]

Ref'd Exhibit No. *10*
 Received in evidence
 NOV 8 1918
not filed 1073-a
 Clerk
not filed Deputy

146 Exhibit No. *11*
 Received in evidence
 FEB 20 1918
 In Court for *146* 11
not filed Clerk
 Deputy

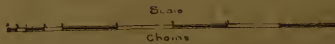


Ref'd No. *14*

Ref'd Exhibit No. *10*
 Received in evidence
 NOV 8 1918
not filed 1073-a
 Clerk
not filed Deputy

Meanders		
37° 52' E	3.11	Chains
43° 16' E	3.50	
25° 31' E	0.80	
25° 16' E	15.18	
34° 10' E	1.60	

CHANNEL



PLAT
 of
 Amended
 U S SURVEY NO 376
 OF THE
 HOMESTEAD CLAIM
 UNDER ACT OF MARCH 3 1903

OF
 C.F. Sheldon
 SITUATE

About one mile NW from Jumbell

DISTRICT OF ALABAMA
 SCALE OF 8.00 CHS TO INCH
 VARIATION 31° 30' EAST
 AREA 47.34 ACRES

SURVEYED BY
 C. E. DAVIDSON
 U S LANDS SURVEYOR
 May 25 21, 1907

The original field notes of the survey of the
 homestead claim of C.F. Sheldon
 from which this plat has been made have
 been examined and approved and are on file in this office
 and I hereby certify that they furnish such an accurate
 description of said claim as well, if incorporated into a
 plat, serve fully to identify the premises, and that such
 reference is made thereto to natural objects and permanent
 monuments as will perpetuate said claim for the locus
 thereof
 And I further certify that this is a correct plat of
 said claim, made in conformity with said original field
 notes of the survey thereof. And the same is hereby
 approved.

RECORDED
 JAMES ALLEN, March 21, 1908, 1908
H. A. Davidson

Plaintiff's Exhibit "E"—Application for Homestead Entry.

U. S. Land Office, Juneau, Alaska, May 2, 1908.

Notice is hereby given that Cyrus F. Sheldon, a resident of Juneau, Alaska, has applied to enter, under section 2289, Revised Statutes of the United States, and the Act of March 3, 1903, the following described tract of land, situate about one mile northwest of the town of Juneau, Alaska, on the shore of Gastineau Channel, known and designated by the U. S. Surveyor General of Alaska, an Amended U. S. Survey No. 365, and more particularly described as follows:

Beginning at corner No. 1, identical with cor. No. 1 of survey Greek Mission Cemetery, a stone marked "A. S. 375 cor. 1," whence U. S. L. M. No. 3 bears N. 62° 06' W, 0.98 chs. dist.; thence along line 1-2 of Greek Cemetery, N. 48° 03' E., 6.00 chs. to cor. No. 2, identical with cor. No. 2 of Greek Cemetery, a stone marked "A. S. 375 cor. 2"; thence north 23.16 chs. to cor. No. 3, a stone marked "A. S. 375 cor. 3"; thence West 26.45 chs. to cor. No. 4, a stone marked "A. S. 375 cor. 4"; thence south 5.48 chs. to cor. No. 5, at high water mark Gastineau Channel, not set, witness corner bears north, 78 links dist., a stone marked "A. S. 375 cor. 5 W. C."; thence from true corner along said high water mark.

- (1) S. 37° 52' E. 5.11 chs.;
- (2) S. 43° 15' E. 9.90 chs.;
- (3) S. 59° 31' E. 6.80 chs.;
- (4) S. 39° 14' E. 13.88 chs.;

(5) S. $67^{\circ} 10'$ E. 1.60 chs., to cor. No. 1, the place of beginning.

Magnetic variation at all corners $31^{\circ} 30'$ E. Area 47.34 acres.

Any and all persons claiming adversely any portion of the above-described tract of land are required to file with the [36] register and receiver of the U. S. Land Office, at Juneau, Alaska, their adverse claim there against, under oath, during the period of publication, or within thirty days thereafter, or they will be barred by the provisions of the statute.

CYRUS F. SHELDEN,

Applicant.

It is hereby ordered that the foregoing notice be published in the "Daily Alaska Dispatch," a daily newspaper printed at Juneau, Alaska, for the statutory period.

Register.

Plffs. Exhibit No. "E." Received in Evidence. Nov. 8, 1916. In Cause No. 1073-A. J. W. Bell, Clerk. By John T. Reed, Deputy. [37]

Plaintiff's Exhibit "F"—Homestead.

"Patent will contain conditions and limitations of the act of March 3, 1909, (35 Stat 844.)"

Land Office at Juneau, Alaska.

January 11, 1911.

**THIS DUPLICATE
CERTIFICATE**

Final Certificate SHOULD BE HELD Application
No. 06 UNTIL NOTICE OF No. 06
ISSUANCE OF PATENT
IS RECEIVED.

It is hereby certified that, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Cyrus F. Sheldon has made payment in full for land embraced in U. S. plat of survey 375 amended, described as follows:

Beginning at Cor. No. 1, whence U. S. L. M. No. 3, bears N. 62° 06' W. 0.98 chs., thence N. 48° 03' E. 6 chs., to Cor. No. 2, thence N. 23.16 chs., to Cor. No. 3, thence W. 26.45 chs., to Cor. No. 4, thence S. 5.48 chs., to Cor. No. 5, M. C., thence meandering, (1) S. 37° 52' E. 5.11 chs., (2) S. 43° 15' E. 3.90 chs., (3) S. 59° 31' E. 6.80 chs., (4) S. 39° 14' E. 13.88 chs., (5) S. 67° 10' E. 1.60 chs. to Cor. No. 1, the place of beginning, containing an area of 47.34 acres, Var. 31° 30' E. being situated on the shore of Gastineau Channel.

Meridian ———, containing ———/100 acres.

Now, therefore, be it known, That on presentation of this certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE, the said Cyrus F.

Sheldon shall be entitled to a patent for the tract of land above described.

C. B. WALKER,
Register.

“Patent will contain conditions and limitations of the act of March 3, 1909 (35 Stat. 844).”

Plffs. Exhibit No. “F.” Received in Evidence Nov. 8, 1916. In Cause No. 1073-A. J. W. Bell, Clerk. By John T. Reed, Deputy. [38]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS MESSERSCHMIDT, CHARLES QUACK-
INBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,

Defendants.

Certificate and Order Settling Bill of Exceptions.

I, ROBERT W. JENNINGS, the Judge of the District Court for the District of Alaska, Division Number One, and the Judge before whom said cause was tried, do hereby certify that the above and foregoing 24 pages of typewritten matter constitute a full, true and correct transcript of all testimony and evidence introduced and heard at the trial, together with all the exhibits offered by either party to the above-entitled cause; that said bill of exceptions was

presented to me for allowance upon the date of this certificate, and I do hereby order that said bill of exceptions be and the same is hereby settled and allowed and made a part of the record in this cause.

Done in open court this 27th day of March, A. D. 1917.

ROBERT W. JENNINGS,

Judge.

Entered Court Journal No. N, page 61.

OK.—H. & H.

Filed in the District Court, District of Alaska,
First Division. Mar. 27, 1917. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [39]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS MESSERSCHMIDT, CHARLES QUACK-
INBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,

Defendants.

Assignment of Errors.

Comes now Cyrus F. Sheldon, plaintiff in the above-entitled cause, files and presents this, his assignment of errors herein, upon which he will rely for a reversal of the judgment and decree entered against him in the District Court for Alaska:

I.

The Court erred in overruling plaintiff's demurrer to defendant's answer by order entered, August 12th, 1915.

II.

The Court erred in granting a motion of the defendants' for a nonsuit at the close of plaintiff's testimony and evidence given in said cause.

III.

The Court erred in making and entering its judgment and decree in favor of the defendants in said cause.

And for these errors and others manifest of record herein plaintiff prays for a reversal of said judgment and decree, and for a new trial of said cause.

CHENEY & ZIEGLER,

Attorneys for Appellant.

Filed in the District Court, District of Alaska,
First Division, Mar. 27, 1917. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [40]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS MESSERSCHMIDT, CHARLES QUACK-
INBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,

Defendants.

Petition and Order Allowing Appeal.

To the Hon. ROBERT W. JENNINGS, Judge of
the Above-entitled Court:

Cyrus F. Sheldon, plaintiff in the above-entitled cause, conceiving himself aggrieved by the judgment and decree of the above-entitled Court made and entered on the 7th day of February, 1917, does hereby appeal from said judgment and decree to the United States Circuit Court of Appeals, for the Ninth Circuit, and prays for an order transmitting a transcript of the record upon which said judgment and decree was made and based to the said Circuit Court of Appeals for the Ninth Circuit, to the end that the record and proceedings may be examined and said judgment and decree reversed or modified and speedy justice done in the premises.

This petition is made upon the assignment of errors filed herein and upon all the records and files in said cause.

CHENEY & ZIEGLER,

Attorneys for Plaintiff.

And now on this 27th day of March, 1917, it is ordered that the foregoing petition for appeal be and the same is hereby allowed.

Done in open court this 27th day of March, 1917.

ROBERT A. JENNINGS,

Judge.

Entered Court Journal No. N, Page 61-62. [41]

Filed in the District Court, District of Alaska,
First Division. Mar. 27, 1917. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [42]

*In the District Court for the District of Alaska,
Division Number One, for Juneau.*

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS MESSERSCHMIDT, CHARLES QUACK-
INBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,

Defendants.

Citation on Appeal

The President of the United States of America to
Gus Messerschmidt, Charles Quackinbush, and
The Juneau Construction Company, Defend-
ants:

You and each of you are hereby cited and admon-
ished to be and appear in the United States Circuit
Court of Appeals for the Ninth Circuit to be holden
at San Francisco, in the State of California, within
thirty days from this date pursuant to an appeal filed
in the Clerk's office of the United States District
Court for the Territory of Alaska, Division Number
One, at Juneau, in a cause wherein Cyrus F. Sheldon
is plaintiff and you are the defendants to show cause
if any there be why the judgment and decree in said
appeal mentioned should not be corrected and speedy
justice done to the parties in that behalf.

WITNESS, the Hon. EDWARD DOUGLASS
WHITE, Chief Justice of the Supreme Court of the
United States, and the Seal of the District Court for

Alaska, Division Number One, this the 27th day of March, 1917.

ROBERT W. JENNINGS,
Judge.

[Seal]

Attest: J. W. BELL,
Clerk.

Service of the above and foregoing citation on appeal is admitted this 27th day of March, 1917.

HELLENTHAL & HELLENTHAL,
Attorneys for Defendants. [43]

Filed in the District Court, District of Alaska,
First Division. Mar. 29, 1917. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [44]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS MESSERSCHMIDT, CHARLES QUACK-
INBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,

Defendants.

Order Fixing Bond.

The Court having heretofore allowed the petition of plaintiff for an appeal, it is ordered that the appeal bond be, and the same is hereby fixed at five hundred (\$500) dollars.

ROBERT W. JENNINGS,
Judge.

Dated March 27, 1917.

Entered Court Journal No. N, Page 62.

Filed in the District Court, District of Alaska,
First Division. Mar. 27, 1917. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [45]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS MESSERSCHMIDT, CHARLES QUACK-
INBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That I, Cyrus F. Sheldon as principal, and George
Miller as surety, are held and firmly bound unto Gus
Messerschmidt, Charles Quackinbush, and The Ju-
neau Construction Company, in the penal sum of
five hundred (\$500) dollars, to the payment of
which well and truly to be made we hereby bind our-
selves, and each of our heirs, executors and admin-
istrators, jointly and severally, firmly by these pre-
sents.

The condition of the above obligation is such, that
whereas the above-named defendants recovered a
judgment against the plaintiff in the above-entitled
cause, that the plaintiff take nothing by his action

and that the defendants recover of the plaintiff the costs herein expended; and whereas the above-bounden Cyrus F. Sheldon, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse said judgment.

NOW, THEREFORE, if the above-named Cyrus F. Sheldon, as appellant, shall prosecute said appeal to effect and if he fails to make good his plea, shall answer all costs and damages adjudged against him, then this obligation shall be null and void, otherwise [46] to remain in full force and effect.

WITNESS our hands and seals this 28th day of March, 1917.

C. F. SHELDON,
Principal.
GEORGE MILLER,
Surety.

United States of America,
Territory of Alaska,—ss.

This is to certify that on this 28th day of March, 1917, before me, a notary public within and for the Territory of Alaska, personally appeared Cyrus F. Sheldon and George Miller, to me known to be the persons who executed the above and foregoing instrument, and each acknowledged that he executed the same freely and voluntarily for the uses and purposes herein expressed.

[Notarial Seal]

A. H. ZIEGLER,
Notary Public for Alaska.

My commission expires July 3d, 1917.

The foregoing bond is approved this 29th day of March, 1917.

ROBERT W. JENNINGS,
Judge.

OK.—S. HELLENTHAL.

[Endorsed]: No. 1073-A. Cyrus F. Sheldon vs. Gus Messerschmidt et al. Filed in the District Court, District of Alaska, First Division. Mar. 29, 1917. J. W. Bell, Clerk. By John T. Reed, Deputy. [47]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS. MESSERSCHMIDT, CHARLES QUACKENBUSH, and THE JUNEAU CONSTRUCTION COMPANY,

Defendants.

Affidavit of Cyrus F. Sheldon of Value of Subject Matter in Controversy.

Cyrus F. Sheldon, being first duly sworn on oath, deposes and says:

I am the plaintiff in the above-entitled cause; that the value of the subject matter in controversy in said cause exceeds *exceeds* the sum of Five Hundred (\$500) Dollars.

C. F. SHELDON.

Subscribed and sworn to before me this 26 day of March, 1917.

[Seal]

A. H. ZIEGLER,

Notary Public for Alaska.

My commission expires July 3d, 1917.

Filed in the District Court, District of Alaska,
First Division. Mar. 26, 1917. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [48]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1073-A.

CYRUS F. SHELDON,

vs.

GUS. MESSERSCHMIDT, CHARLES QUACK-
ENBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,

Defendants.

**Order Transmitting Plaintiff's Original Exhibit
"D."**

Upon oral motion of plaintiff, it appearing that Plaintiff's Exhibit "D," in the above-entitled cause is a patent plat being U. S. Survey No. 375; and,

It further appearing that it is necessary that said Exhibit "D" be made a part of the bill of exceptions in this cause on appeal,—

NOW, THEREFORE, it is hereby ordered that the clerk of this court be and he hereby is authorized and instructed to attach said original exhibit "D" to a certified copy of this order, and to include

said certified copy of this order together with said exhibit "D," attached hereto in the bill of exceptions in this cause in order that said exhibit may be withdrawn from the files of this court and transmitted to the Circuit Court of Appeals.

Done in open court this 26th day of March, A. D. 1917.

ROBERT W. JENNINGS,
Judge.

Entered Court Journal No. N, Page 60.

OK.—H. & H.

Filed in the District Court, District of Alaska,
First Division Mar. 26, 1917. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [49]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1073-A.

CYRUS F. SHELDON,
Plaintiff,
vs.

GUS. MESSERSCHMIDT, CHARLES QUACK-
ENBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,
Defendants.

Appellant's Praecept for Transcript of Record.

To the Clerk of the Above-entitled Court:

Please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals

for the Ninth Circuit, at San Francisco, and include in said transcript the following proceedings, pleadings and papers, on file in your office:

1. Amended Complaint.
2. Answer to Amended Complaint.
3. Demurrer to Defendant's Answer.
4. Order Overruling Demurrer to Defendant's Answer, Dated August 12th, 1915.
5. Reply.
6. Judgment.
7. Bill of Exceptions.
8. Assignment of Errors.
9. Petition for Appeal and Order Allowing same.
10. Citation on appeal.
11. Order Fixing Bond.
12. Bond on Appeal.
13. Affidavit of Cyrus F. Sheldon.
14. Order Transmitting Original Exhibit "D."
15. This Praecipe.

Dated at Juneau, Alaska, March 29th, 1917.

CHENEY & ZIEGLER,
Attorneys for Appellant [50]

Filed in the District Court, District of Alaska,
First Division. Mar. 29, 1917. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [51]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1073-A.

CYRUS F. SHELDON,

Plaintiff,

vs.

GUS. MESSERSCHMIDT, CHARLES QUACK-
ENBUSH, and THE JUNEAU CON-
STRUCTION COMPANY,

Defendants.

**Certificate of the Clerk of the District Court to
Transcript of Record.**

United States of America,
Territory of Alaska,—ss.

I, J. W. Bell, clerk of the District Court for the District of Alaska, Division Number One, do hereby certify that the foregoing and hereto attached — pages of typewritten matter numbered from 1 to — both inclusive, constitute a full, true, and complete copy, and the whole thereof, prepared in accordance with the praecipe of the plaintiff and appellant on file herein and made a part hereof, in the cause wherein Cyrus F. Sheldon is plaintiff and Gus Messerschmidt, Charles Quackenbush, and The Juneau Construction Company are defendants, No. 1073-A, as the same appears of record and on file in my office, and that the said record is by virtue of an order allowing appeal, and Citation issued in

this cause and the return thereof in accordance therewith.

I do further certify that this transcript was prepared by me in my office, and the cost of preparation, examination, and certificate, amounting to \$23.45, has been paid to me by counsel for plaintiff.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled Court this 31st day of March, 1917.

[Seal]

J. W. BELL,
Clerk.

By _____,
Deputy.

[Endorsed]: No. 2973. United States Circuit Court of Appeals for the Ninth Circuit. Cyrus F. Sheldon, Appellant, vs. Gus. Messerschmidt, Charles Quackenbush, and The Juneau Construction Company, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed April 11, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

